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HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HON'BLE SHRI JUSTICE G. BHAVANI PRASAD

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WRIT APPEAL NO. 469 OF 2006

BETWEEN

Tella Narayana & others

.....Appellants

And

Commissioner of Endowments, Government of Andhra Pradesh, Hyderabad & others

.....Respondents

:: JUDGMENT ::

Counsel for the Appellants : Shri Satyanarayana Nimmagadda

Counsel for Respondent Nos. 1 and 2 : Government Pleader for Endowments

Counsel for Respndent No.3 : Smt. N. Indrani

Counsel for Respondent No.4 : Shri K. Ananda Rao

Dated: 18-04-2006

Per G.S. SINGHVI, CJ

Whether Commissioner of Endowments, Andhra Pradesh, (respondent No.1) could, without hearing the appellants, cancel the approval accorded to the grant of lease in their favour by private negotiations is the question which arises for determination in this appeal filed against order dated 15.12.2005 passed by the learned Single Judge in Writ Petition No.19452 of 2004.

The appellants were granted temporary lease by Executive Officer, Shri Gorantla Venkanna Trust, Thimmasamudram village (respondent No.3) in respect of land admeasuring Acs.11.00 comprised in survey No. 562/2, Acs.11.68 cents comprised in survey No. 562/2, Acs.13.00 comprised in survey No.561/2, Acs.11.06 cents comprised in survey No.562/2, Acs.11.20 cents comprised in survey No. 562/2 and Acs.17.65 cents comprised in survey No.561/2 respectively situated at Thimmasamudram Village, Naguluppalapadu Mandal, Prakasam District. After some time, the appellants filed Writ Petition Nos. 14656, 14647 and 14660 of 2003 for grant of a declaration that they are landless poor persons. The same were dismissed by the learned Single Judge. Thereafter, they approached respondent No.3 for extension of lease for three years by asserting that due to drought conditions, they could not cultivate the land. They also agreed to enhance the amount of lease. Respondent No.3 favourably recommended their case to Commissioner, Endowments, Andhra Pradesh (respondent No.1), who, vide proceedings D.Dis.No.M1/34446/2004, dated 20.08.2004, approved the extension of lease of the appellants for a period of three years i.e. from 2004-05 to 2006-07. It, however, appears that when respondent No.1 was apprised of the fact that in terms of the Andhra Pradesh Charitable and Hindu Religious Institutions (Lease of Agricultural Lands) Rules, 2003 (for short 'the Rules'), the lease could have been granted only by way of

public auction and no reason had been recorded in proceedings dated 20.08.2004 for making an exception, he, vide D.Dis.No.M1/46725/2004, dated 04.10.2004, cancelled the extension of lease in favour of the appellants and directed Executive Officer to put the land to public auction.

The appellants challenged the aforementioned action of respondent No.1 in Writ Petition No.19452 of 2004, primarily on the ground of violation of rules of natural justice. They pleaded that by virtue of extension granted in their favour, they had acquired vested right to continue to occupy the land for three years and they could not have been deprived of this right without being heard.

The learned Single Judge, after noticing the rival pleadings and arguments of the learned counsel, dismissed the writ petition by recording the following observations:

> "It is to be noted that as per the A.P. Charitable and Hindu Religious Institutions (Lease of Agricultural Lands) Rules, 2003 (for short 'the Rules') made under G.O.Ms.No.379, Revenue Endowment-I, dated 11.03.2003, all leases of the agricultural lands shall be only by public auction. It is true that the proviso to Rule 7 empowers the competent authority to permit the lease otherwise than by public auction, but the same can be done only if he satisfies for reasons to be recorded in writing that such procedure is necessary and in the interest of the Institution/Endowment.
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> It is true that the Commissioner of Endowments, being the competent authority, in appropriate cases may permit the lease otherwise than by public auction, however, the 1st respondent while granting extension of lease vide order dated 20.08.2004 failed to record any reasons expressing his satisfaction that such extension is necessary and in the interest of the Institution.
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> It is also relevant to note that under Rule 17 of the Rules, in the case of all leases, the tenant should furnish security i.e. a sum equal to at least one year's rental or unencumbered immovable property equal in value to three years' rental to the satisfaction of the Executive Authority. That apart, as per Rule 18, all lease deeds shall be in writing and shall be duly stamped and registered at the expense of the lessee. Sub-rule (2) of Rule 18 also makes it clear that no person shall be placed in possession of the leased land or allowed to exercise his rights under the lease until he has executed the lease deed and complied with

the applicable requirements of the Rules.

In the case on hand, nothing has been placed before this Court to show that any such lease deed has been registered in favour of the petitioners. In the circumstances, I find force in the submission of the respondents that the petitioners have not been put in possession of the land in question in pursuance of the order of the 1st respondent dated 20.08.2004.

Moreover, Rule 19 of the Rules specifically provides that any lease granted, continued or allowed to be continued otherwise than in accordance with the Rules shall be null and void and the person or persons in possession of the land shall be deemed to be an encroacher within the meaning of Section 83 of the Act.

In the light of Rule 19 of the Rules and particularly having regard to the fact that the petitioners are not landless poor and the so called extension of the lease in their favour is found to be not in accordance with law, I do not find any substance in the contention of the petitioners that the impugned order dated 04.10.2004 is arbitrary and illegal for want of prior notice to the petitioners."

Shri Satyanarayana Nimmagadda, learned counsel for the appellants argued that the action taken by respondent No.1 to cancel the approval accorded by him for extension of lease of the appellants for three years was vitiated due to violation of the rule of 'audi alterim partem' and the learned Single Judge committed serious error by refusing to entertain his clients' prayer for annulment of the decision contained in letter dated 04.10.2004. He further argued that exercise of power by respondent No.1 under proviso to Rule 7(1) of the Rules was implicit in the sanction accorded by him to the proposal of respondent No.3 for extension of lease and, therefore, cancellation thereof without any rhyme or reasons should be declared as arbitrary and quashed on the ground of violation of the rules of natural justice.

We have given serious thought to the arguments of the learned counsel, but have not felt persuaded to agree with him. Rules of natural justice are multi-faceted and multi-dimensional. One of these rules is that no person should be condemned unheard. This rule is also described as the rule of 'audi alterim partem'. Every quasi-judicial authority and even administrative authorities who are entrusted with the task of deciding lis between the parties or passing an

order, which may adversely affect the rights of a person, are duty bound to comply with this rule. Ordinarily, the order passed by a quasi-judicial authority or an action taken by the administrative authority affecting the right of a person, without affording opportunity of hearing to him, is liable to be invalidated on the ground of violation of the rules of natural justice, but this principle is not of universal application and, in appropriate cases, order passed or action taken by public authority, without complying with the rule of hearing may not be upset by the Court. Where acceptance of the prayer made in a writ petition for annulment of action of the public authority on the ground of violation of rule of 'audi alteram partem' is likely to result in restoration of illegal order or illegal action taken by such public authority, the Court may refuse to nullify the impugned order or action. For this proposition, we can draw support from the judgments of the Supreme Court in **S.D.S. Shipping (P) Ltd. V. Jay Container Services Co. (P) Ltd.** and **ONGC Ltd. v. Sendhabhai Vastram Patel.** In the same context, we may usefully refer to order dated 10.04.2006 passed by the Division Bench in Writ Appeal No.378 of 2006. The facts of that case were that transfer of assigned lands made in favour of the appellants was annulled by the competent authority by invoking Sections 3 and 4 of the Andhra Pradesh Assigned Lands (Prohibition of Transfers) Act, 1977 albeit without giving notice and opportunity of hearing. The writ petitions filed by the appellants were dismissed by the learned Single Judge on the ground that the transfers made in their favour were nullity. While approving the view taken by the learned Single Judge, the Division Bench observed:

> "It is settled law that in exercise of the power under Article 226 of the Constitution of India, the High Court will not issue a writ which may result in restoration of an illegal order or perpetuation of an illegality. While exercising the power under Article 226 of the Constitution, the High Court is not bound to strike down every wrong order merely because it will be lawful to do so and a discretionary relief can be refused if it is found that issue of a writ would result in revival of an illegality or defeat the object of a legislation enacted for benefit of the poor/have-nots of the society. For this proposition we can draw support from the judgments of the Supreme Court in **S.D.S. Shipping (P) Ltd. v. Jay Container Services Co. (P) Ltd.** (2003) 9 SCC 439 and **ONGC Ltd. v. Sendhabhai Vastram Patel** {(2005) 6 SCC 454)}. If the claim of the appellants is accepted, then the same would result in revival of the transaction which was prohibited by

Section 3 of the Act. Therefore, notwithstanding the fact that Mandal Revenue Officer has passed order for resumption of the land after long lapse of time, we do not consider it a fit case for exercise of discretionary jurisdiction of this Court to nullify the order dated 31.12.1997."

In the present case, we find that proceedings dated 20.08.2004 issued by respondent No.1 approving the recommendations made by respondent No.3 for extension of lease in favour of the appellants was nullity inasmuch as while doing so, respondent No.1 overlooked the mandate of Rule 7(1), which provides for disposal of the temple property by way of public auction. For the sake of convenience, Rule 7 of the Rules is reproduced below:

"**7. Leases by Public Auction:**

1. All leases shall be by public auction:

   Provided that, the competent authority may on a request made in writing by the Executive Authority, permit the lease of any property otherwise than by public auction, if he is satisfied, for reasons to be recorded in writing, that the suggested procedure is necessary and in the interests of the institution or Endowment.

2. The Competent Authority may also on a request made in writing by the Executive Authority, permit him to call for sealed tenders to be received before the date of auction and in such a case, Tenders received, if any, shall be opened before the public at the place of auction. The highest amount offered in the Tenders or public auction, as the case may be, shall be taken into consideration for the purpose of finalizing the highest bid.

3. The public auction shall be held at a convenient place in the village where the properties are situated or at such other place as may be decided by the competent authority having regard to all the relevant circumstances."

The analysis of the above reproduced rule makes it clear that grant of leases by public auction is the rule. Proviso to Rule 7(1) does empower the

competent authority to sanction the grant of lease of any property otherwise than by public auction, but that can be done only if the authority concerned is satisfied that such course is in the interest of institution or endowment. For this purpose, the concerned authority is required to record reasons in writing. A reading of proceedings dated 20.08.2004 shows that respondent No.1 did not record any reason for making a departure from the rule of disposal of temple property by way of public auction. Therefore, approval accorded by respondent No.1 to the proposal of respondent No.3 for extension of leases of the appellants will have to be treated as nullity. As a corollary to this, it must be held that action taken by respondent No.1 for cancellation of the approval with a direction that the property be put to auction cannot be termed as arbitrary or vitiated due to violation of rules of natural justice. If proceedings dated 04.10.2004 issued by respondent No.1 are quashed on the ground of violation of the rules of natural justice, then, approval accorded to the proposal of respondent No.3 for extension of the leases of the appellants, which, as mentioned above, was patently illegal will get revived. Therefore, keeping in view the settled law that in exercise of power under Article 226 of the Constitution of India, the High Court will not issue an order which may result in restoration/revival of a patently illegal order or action, we decline to entertain the appellants' prayer.

For the reasons stated above, we hold that the learned Single Judge did not commit any error by refusing to nullify proceedings dated 04.10.2004 issued by respondent No.1.

In the result, the appeal is dismissed.

G.S. SINGHVI, CJ

G. BHAVANI PRASAD, J

18.04.2006

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